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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/458,354	12/09/1999	STEPHEN G. SCHAILBE	22965-3960	8755

25213 7590 04/05/2002

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[REDACTED] EXAMINER

THOMPSON, MICHAEL M

ART UNIT	PAPER NUMBER
3763	

DATE MAILED: 04/05/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

UD

<b>Offic Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/458,354 Examiner Michael M. Thompson	SCHAIBLE ET AL. Art Unit 3763

-- The MAILING DATE of this communication appears on the cover sheet with the correspondenc address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) 1-7 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 8-21 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

- 12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
  - a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2 .	6) <input type="checkbox"/> Other: _____

**DETAILED ACTION**

***Election/Restrictions***

1. Applicant's election of Group II, claims 8-21 in Paper No. 6 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).
  
2. Claims 1-7 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected Group, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 6.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.
  
4. Claims 8-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kume et al. (5,411,016) in view of Muni et al. (5,316,706). Kume et al. teaches an intraluminal balloon catheter having an elongated catheter shaft that is substantially transparent formed of a polymeric material. He teaches an inflatable member in communication with an inflation lumen. Kume et al. further teaches an outer diameter that is about 0.7 mm. Kume et al. further teaches that the

balloon can either be transparent or non-transparent and further teaches different materials that may comprise a balloon made from a different polymer. It is clear that Kume et al. states that it is contemplated that any suitable polymeric materials may be used in the construction of the device. Kume et al. teaches all of the limitations of the claims except for explicitly reciting the device being constructed of an amorphous polymeric material such as polyetheretherketone (PEEK) of a crystallinity not greater than 20%, an outer diameter of about 0.05 to about 0.13, or one portion of the shaft being constructed of PEEK and the other section being constructed of another polymeric material. Muni et al. teaches a catheter formed of an amorphous material such as PEEK wherein a portion of the catheter is more crystalline than another portion to provide different flexibilities. He teaches a crystallinity of about 20% to provide a difference in stiffness. It would have been obvious to one having ordinary skill in the art, at the time the invention was made to have modified the balloon catheter device of Kume et al. with the amorphous PEEK transparent material and all of the inherent properties of PEEK for the purpose of increasing stiffness, kink resistance, enhanced thermal and electrical conductance, and increased resistance to chemicals while reducing permeability to gasses. Please note that it is the Examiner's position that an outer diameter of about 0.05 to 0.13 is merely an obvious design choice and the transmittance of visible light from about 50% to 100% is considered an inherent property of amorphous polyetheretherketone.

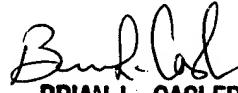
### Contacts

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Michael Thompson whose telephone number is (703) 305-1619. The Examiner can normally be reached on Monday through Friday from 9 am to 5 PM.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's Primary, AnhTuan Nguyen, can be reached on (703) 308-2154. The official fax phone number for submissions to the organization where this application or proceeding is assigned is (703) 872-9302. The official fax phone number for submission of After Final response is (703) 872-9303.

Michael M. Thompson

Patent Examiner

  
**BRIAN L. CASLER**  
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MT

March 8, 2002